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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/955,469
Filing Date: September 18, 2001
Appellant(s): TRETHEWEY, JAMES R.

Matthew J. Smith (Reg. No.58,224)

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 4/26/2006 appealing from the Office action mailed on 5/06/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,801,949	BRUCK ET AL	10-2004
5,774,660	BRENDEL ET AL	06-1998

6,289,382 BOWMAN-AMUAH 09-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 9-20 and 24-34 rejected under 35 U.S.C. 102(e) as being unpatentable over Bruck et al. (hereafter Bruck), US pat. No.6,801,949 in view of Brendel et al., U.S. pat. No.5,774,660.

As to claim 1, Bruck discloses a method of providing a remote networked computer with a service session using one of a plurality of similarly functioning software applications residing on different servers (206, 208, 210, 212 fig.2) with different unique network addresses, the method comprising:

receiving, from the remote computer [one of clients' computers (not shown) connected to Internet (202 fig.2) to servers] and at a device having a unique network address (providing network assignments including IP addresses information to servers) that is different from the network address of any of the servers, a packet-based

message comprising a request for a service session (see abstract, fig.2, col.6 lines 25-65);

assigning one of the several servers (206, 208, 210, 212 fig.2) to be used by the remote computer in the service session and transmitting to the remote computer (management of network servers to assure network availability), a packet-based message comprising the unique network address of the assigned server (using of dynamically assignable IP addresses for each subnet) for the remote user (client) to address subsequent messages during the service session (see fig.3, col.7 line 11 to col.8 line 49).

Bruck does not specifically disclose a real network address of a server. However, Brendel in the same network environment discloses a real network address of a server [assigning real Internet Protocol (IP) address to a server rather than the virtual address, see Brendel's fig.17; abstract, col.16 line 46 to col.17 line 57]. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Brendel's teachings into the computer system of Bruck to process data information because it would have enabled routers to use the real IP address of the assigned server to route data packets to assigned server (see Brendel's col.16 lines 46-63) and thus balanced the load on each server in a communications network.

As to claim 2, Bruck discloses receiving, at the assigned server, subsequent packet-based messages from the remote computer (client) as part of the service session: the

subsequent messages each being addressed to the unique network address of the assigned server (assigning a primary IP address to a best server, see col.8 lines 1-49 and col.9 lines 31-59). Bruck does not specifically disclose a real network address of a server. However, Brendel in the same network environment discloses a real network address of a server [assigning real Internet Protocol (IP) address to a server rather than the virtual address, see Brendel's fig.17, abstract, col.16 line 46 to col.17 line 57]. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Brendel's teachings into the computer system of Bruck to process data information because it would have enabled routers to use the real IP address of the assigned server to route data packets to assigned server (see Brendel's col.16 lines 46-63) and thus balanced the load on each server in a communications network.

As to claim 3, Bruck discloses, receiving, at the assigned server, periodic packet-based test messages from the remote computer, and packet-based message back to the remote computer, and in response, transmitting a indicate an operable connection (ensuring no single server machine become overload, see col.8 lines 1-49 and col.9 lines 31-59).

As to claim 4, Bruck discloses that the device that receives the message comprising a request for a service session is load balancer (104 fig.1) (see col.2 lines 6-31 and col.8 lines 1-49).

As to claims 5 and 9, Bruck discloses that the software applications involve interaction between multiple remote computers and are peer-to-peer applications (see fig.4, col.8 line 51 to col.9 line 58).

As to claim 10, Bruck discloses wherein the message comprising a request for a service session includes a network address header containing the unique network address of the load balancer, a data port address header, and data fields associated with the software application (subnet addresses, list of nodes, flags, see figs.7, 10, 12, col.11 lines 12-56 and col.18 line 44 to col.19 line 65).

As to claim 11, Bruck discloses that the data fields associated with the software application includes a length field, a type field, and a field containing the network address of the remote computer that requested the service session (fields of fig.26, see figs. 26, 27, col.36 lines 7-51 and col.37 line 17 to col.38 line 29).

As to claim 12, Bruck discloses that the message transmitted address of the assigned server includes a network address header containing a unique network address (IP addresses) associated with the remote computer that requested the service session data port address header and data fields associated with the software application (sequence fields, see figs.7, 10, 12, col.11 lines 12-56 and col.18 line 44 to col.19 line 65). Bruck does not specifically disclose a real network address of a server. However,

Brendel in the same network environment discloses a real network address of a server [assigning real Internet Protocol (IP) address to a server rather than the virtual address, see Brendel's fig.17, abstract, col.16 line 46 to col.17 line 57]. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Brendel's teachings into the computer system of Bruck to process data information because it would have enabled routers to use the real IP address of the assigned server to route data packets to assigned server (see Brendel's col.16 lines 46-63) and thus balanced the load on each server in a communications network.

As to claim 13, Bruck discloses that the data fields associated with the software applications includes a length field, type field and a field containing the network address of the assigned server (information about the request server, see figs.7, 10, 12, col.11 lines 12-56 and col.18 line 44 to col.19 line 65). Bruck does not specifically disclose a unique real network address of a server. However, Brendel in the same network environment discloses a real unique network address of a server [assigning real Internet Protocol (IP) address to a server rather than the virtual address, see Brendel's fig.17, abstract, col.16 line 46 to col.17 line 57]. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Brendel's teachings into the computer system of Bruck to process data information because it would have enabled routers to use the real IP address of the assigned server to route data packets to assigned server (see Brendel's col.16 lines 46-63) and thus balanced the load on each server in a communications network.

As to claims 14-16, Bruck discloses that the unique network addresses are all unique IP addresses, the packet-based message comprising the unique network address the assigned server is transmitted by the assigned server and comprising the unique network address of the assigned server is transmitted by a load balancer (104 fig.1) (see figs.1, 7, col.2 lines 6-31, col.8 lines 1-49 and col.18 line 44 to col.19 line 65).

Bruck does not specifically disclose a real network address of a server. However, Brendel in the same network environment discloses a real network address of a server [assigning real Internet Protocol (IP) address to a server rather than the virtual address, see Brendel's fig.17; abstract, col.16 line 46 to col.17 line 57]. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Brendel's teachings into the computer system of Bruck to process data information because it would have enabled routers to use the real IP address of the assigned server to route data packets to assigned server (see Brendel's col.16 lines 46-63) and thus balanced the load on each server in a communications network.

Claim 17 is rejected for the same reasons set forth in claim 1. As to the added limitations, Bruck further discloses a load balancer (104 fig.1) having a unique network address different from the unique network address (IP address) of any other servers (see also fig.1, col.2 lines 6-31 and col.8 lines 1-49). Bruck does not specifically disclose a real network address of a server. However, Brendel in the same network environment discloses a real network address of a server [assigning real Internet

Protocol (IP) address to a server rather than the virtual address, see Brendel's fig.17, abstract, col.16 line 46 to col.17 line 57]. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Brendel's teachings into the computer system of Bruck to process data information because it would have enabled routers to use the real IP address of the assigned server to route data packets to assigned server (see Brendel's col.16 lines 46-63) and thus balanced the load on each server in a communications network.

As to claim 18, Bruck discloses that the first and second processors are the same, and the first and second memory are the same, the second processor and second memory thus being part of the load balancer (see also fig.1, col.2 lines 6-31 and col.8 lines 1-49).

As to claims 19 and 20, Bruck discloses that the second processor and the second memory are part of the assigned server and applications involve interaction between multiple remote users (assigning IP address to each server machine cluster, see fig.4, col.8 line 51 to col.9 line 58).

Claims 24-29 are rejected for the same reasons set forth in claims 9-14 respectively.

Claims 30-34 are rejected for the same reasons set forth in claims 1 and 10-13 respectively.

3. Claims 6-8, 21-23 and 35-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruck in view of Brendel as in item 3 above and further in view of Bowman-Amuah et al.(hereafter Bowman-Amuah), US pat. No.6,289,382.

As to claim 35, Bruck discloses a computer readable medium having stored thereon program instructions that when executed by a processor in a networked computer perform the following functions:

a predetermined user command transmits, in response to input to the networked computer a packet-based message comprising a request, the message being addressed to a unique network service session to a remote address associated with the request, the request comprising a plurality of different servers with different unique network addresses, each thereon similarly functioning software applications to provide the servers (206, 208, 210, 212 fig.2) having a service session (providing network assignments including IP addresses information to servers, see abstract, fig.2, col.6 lines 25-65).

in response to receiving from the request packet-based message comprising a unique network address for one of the plurality of servers that has been assigned for the transmits during the service session packet-based messages addressed to the unique network address of the assigned server (see fig.3, col.7 line 11 to col.8 line 49). Bruck does not specifically disclose a real network address of a server. However, Brendel in the same network environment discloses a real network address of a server

[assigning real Internet Protocol (IP) address to a server rather than the virtual address, see Brendel's fig.17, abstract, col.16 line 46 to col.17 line 57]. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Brendel's teachings into the computer system of Bruck to process data information because it would have enabled routers to use the real IP address of the assigned server to route data packets to assigned server (see Brendel's col.16 lines 46-63) and thus balanced the load on each server in a communications network.

Neither Bruck nor Brendel specifically disclose a request including a service provider. However, Bowman-Amuah in the same network environment discloses a request including a service provider (see abstract, col.1 lines 21-53 and col.128 lines 6-50). It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement a service provider of Bowman-Amuah in the computer system of Bruck to provide data content to servers because it would have provided efficient controls for triggering of distribution of digitalized content to selected groups of computer servers in a communication network.

As to claim 36, the combination of Bruck and Brendel and Bowman-Amuah discloses a service session involves interaction between multiple networked computers remote from the service provider (see Bruck's fig.3, col.7 line 11 to col.8 line 49, Brendel's col.16 lines 46-63 and Bowman-Amuah's col.1 lines 21-53 and col.128 lines 6-50). It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Bowman-Amuah's teachings into the computer system of Bruck to

provide data content to clients because it would have enabled servers to provide a plurality sets of services to clients over a communications network.

As to claims 6-8, 21-23, 37 and 38, neither Bruck nor Brendel discloses providing Internet telephony service, multiple-user gaming applications and music-sharing applications. However, Bowman-Amuah in the same network environment further discloses providing Internet telephony service, multiple-user gaming applications and music-sharing applications (providing multiple services in a plurality of computer programming applications, see col.15 line 54 to col.16 line 32 and col.143 lines 15-53). It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Bowman-Amuah's teachings into the computer system of Bruck to provide data content to clients because it would have enabled servers to provide a plurality sets of services to clients over a communications network.

As to claim 39, Bruck further discloses periodically transmits during the service session packet-based test messages addressed to the unique network address of the assigned server and determines that a connection with the assigned server is disconnected if a packet-based message responding to the test message is not received from the assigned server within a predetermined period of time (using Sequence number field to process data information, see fig.7, col.11 line 12 to col.12 line 64 and col.13 lines 10-37). Bruck does not specifically disclose a real network address of a server. However, Brendel in the same network environment discloses a real network address of a server

[assigning real Internet Protocol (IP) address to a server rather than the virtual address, see Brendel's fig.17, abstract, col.16 line 46 to col.17 line 57]. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Brendel's teachings into the computer system of Bruck to process data information because it would have enabled routers to use the real IP address of the assigned server to route data packets to assigned server (see Brendel's col.16 lines 46-63) and thus balanced the load on each server in a communications network.

As to claim 40, the combination of Bruck and Brendel and Bowman-Amuah discloses that in response to determining that a connection with the assigned server disconnected, transmits a packet-based message comprising a request for a service session to the remote service provider and addressed to the unique network address associated with the service provider (see Bruck's fig.7, col.11 line 12 to col.12 line 64 and col.13 lines 10-37 and Bowman-Amuah's col.1 lines 21-53 and col.128 lines 6-50). It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Bowman-Amuah's teachings into the computer system of Bruck to provide data content to clients because it would have enabled servers to provide a plurality sets of services to clients over a communications network.

(10) Response to Argument

1) Appellant asserts that the combination of the cited references does not disclose “wherein a message comprising a unique real network address of an assigned server of a service session is transmitted to a remote computer”.

Examiner respectfully disagrees. The combination of the cited references (Bruck and Brendel) discloses the Applicant's claimed invention. Bruck discloses a method of providing a remote networked computer with a service session using one of a plurality of similarly functioning software applications residing on different servers (four servers as 206, 208, 210, 212 fig.2) with different unique network addresses (providing network reassessments of network addresses including IP addresses information to servers while implementing load balancing function between servers, see abstract, fig.2, col.6 lines 25-65), receiving from the remote computer [one of clients' computers (not shown) connected to Internet (202 fig.2) to servers]. Specifically, Bruck discloses a packet-based message comprising the unique network address of the assigned server (using of dynamically assignable IP addresses for each subnet) for the remote user (client) to address subsequent messages during the service session (the four servers can dynamically reconfigure traffic assignments of virtual IP addresses among themselves and provide network availability and improved server response to client machine over the Internet, see fig.3, col.7 line 11 to col.8 line 49). Bruck does not specifically disclose a real network address of a server. However, Brendel in the same network environment discloses a real network address of a server [assigning real Internet

Protocol (IP) address to a server rather than the virtual address, see Brendel's fig.17, abstract, col.16 line 46 to col.17 line 57]. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Brendel's teachings into the computer system of Bruck to process data information because it would have enabled routers to use the real IP address of the assigned server to route data packets to assigned server (see Brendel's col.16 lines 46-63) and thus balanced the load on each server in a communications network. Therefore, Examiner respectfully submit that the combination of Bruck and Brendel discloses the Appellant's claimed invention.

2) Appellant asserts that in dependent claim 15, Appellant asserts that it is unclear that the term "the packet based message...transmitted by the assigned server" or "the packet based message ...transmitted by a load balancer".

Examiner respectfully disagrees. Firstly, the term “...transmitted by a load balancer” belongs to dependent claim 16, not claim 15 as Appellant's assertion. In the Final Office Action, Examiner discloses that the rejection paragraph including claims 14-16. Secondly, Bruck discloses “the packet based message...transmitted by the assigned server” as the four servers can dynamically reconfigure traffic assignments of virtual IP addresses among themselves and provide network availability and improved server response to client machine over the Internet (see fig.3, col.7 line 11 to col.8 line 49). Bruck does not specifically disclose a real network address of a server. However,

Brendel in the same network environment discloses a real network address of a server [assigning real Internet Protocol (IP) address to a server rather than the virtual address, see Brendel's fig. 17, abstract, col. 16 line 46 to col. 17 line 57]. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Brendel's teachings into the computer system of Bruck to process data information because it would have enabled routers to use the real IP address of the assigned server to route data packets to assigned server (see Brendel's col. 16 lines 46-63) and thus balanced the load on each server in a communications network. Therefore, Examiner respectfully submit that the combination of Bruck and Brendel discloses the Appellant's claimed invention.

3) Appellant asserts that neither Bruck nor Brendel discloses transmitting the real network address and both Bruck and Brendel teaches away from the remote network computer using the real network addresses of an assigned server during a service session.

Examiner respectfully point out that the combination of Bruck and Brendel discloses the Appellant's invention. Specifically, Bruck discloses a packet-based message comprising the unique network address of the assigned server (using of dynamically assignable IP addresses for each subnet) for the remote user (client) to address subsequent messages during the service session (the four servers can dynamically reconfigure traffic assignments of virtual IP addresses among themselves

and provide network availability and improved server response to client machine over the Internet, see fig.3, col.7 line 11 to col.8 line 49). Bruck does not specifically disclose a real network address of a server. However, Brendel in the same network environment discloses a real network address of a server [assigning real Internet Protocol (IP) address to a server rather than the virtual address, see Brendel's fig.17, abstract, col.16 line 46 to col.17 line 57]. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Brendel's teachings into the computer system of Bruck to process data information because it would have enabled routers to use the real IP address of the assigned server to route data packets to assigned server (see Brendel's col.16 lines 46-63) and thus balanced the load on each server in a communications network. Therefore, Examiner respectfully submit that the combination of Bruck and Brendel discloses the Appellant's claimed invention.

4) Appellant asserts the cited references does not disclose "transmitting the real network address of an assigned server to a remote computer" and both cited references (Bruck and Brendel) teach away from the remote network computer using the real network addresses of an assigned server during a service session.

Examiner respectfully point out that the combination of Bruck and Brendel discloses the Appellant's invention. Bruck discloses a method of providing a remote networked computer with a service session using one of a plurality of similarly

functioning software applications residing on different servers (four assigned servers as 206, 208, 210, 212 fig.2) with different unique network addresses (providing network reassessments of network addresses including IP addresses information to servers while implementing load balancing function between servers, see abstract, fig.2, col.6 lines 25-65). Specifically, Bruck discloses a packet-based message comprising the unique network address of the assigned server (using of dynamically assignable IP addresses for each subnet) for the remote computer (client computer) to address subsequent messages during the service session (the four servers can dynamically reconfigure traffic assignments of virtual IP addresses among themselves and provide network availability and improved server response to client machine over the Internet, see fig.3, col.7 line 11 to col.8 line 49). Bruck does not specifically disclose a real network address of a server. However, Brendel in the same network environment discloses a real network address of a server [assigning real Internet Protocol (IP) address to a server rather than the virtual address, see Brendel's fig.17, abstract, col.16 line 46 to col.17 line 57]. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Brendel's teachings into the computer system of Bruck to process data information because it would have enabled routers to use the real IP address of the assigned server to route data packets to assigned server (see Brendel's col.16 lines 46-63) and thus balanced the load on each server in a communications network. Therefore, Examiner respectfully submit that the combination of Bruck and Brendel discloses the Appellant's claimed invention.

5) Appellant asserts the cited references does not disclose "transmitting the real network address of an assigned server to a networked computer and receiving that real network address at the networked computer" and both cited references (Bruck and Brendel) teach away from the remote network computer using the real network addresses of an assigned server during a service session.

Examiner respectfully point out that the combination of Bruck and Brendel discloses the Appellant's invention. Bruck discloses a method of providing a remote networked computer with a service session using one of a plurality of similarly functioning software applications residing on different servers (four assigned servers as 206, 208, 210, 212 fig.2) with different unique network addresses (providing network reassessments of network addresses including IP addresses information to servers while implementing load balancing function between servers, see abstract, fig.2, col.6 lines 25-65). Specifically, Bruck discloses a packet-based message comprising the unique network address of the assigned server (using of dynamically assignable IP addresses for each subnet) for the networked computer (client computer) and receiving that network address at the network computer (the four servers can dynamically reconfigure traffic assignments of virtual IP addresses among themselves and provide network availability and improved server response to client computer over the Internet, see fig.3, col.7 line 11 to col.8 line 49). Bruck does not specifically disclose a real network address of a server. However, Brendel in the same network environment discloses a real network address of a server [assigning real Internet Protocol (IP)

address to a server rather than the virtual address, see Brendel's fig.17, abstract, col.16 line 46 to col.17 line 57]. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement Brendel's teachings into the computer system of Bruck to process data information because it would have enabled routers to use the real IP address of the assigned server to route data packets to assigned server (see Brendel's col.16 lines 46-63) and thus balanced the load on each server in a communications network. Therefore, Examiner respectfully submits that the combination of Bruck and Brendel discloses the Appellant's claimed invention.

For the above reasons, it is believed that the rejections should be sustained.

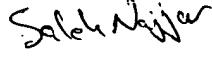
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